

MATTER OF DUCHNESKIE

In Section 212(e) Proceedings

A-12308431

Decided by District Director January 4, 1966

As compliance with the foreign residence requirement of section 212(e), Immigration and Nationality Act, would result in hardship to the United States citizen children and spouse of an exchange visitor, a waiver of the requirement is granted, especially since the applicant during her training in the United States participated in the dental treatment of school children, thereby imparting her skill to persons here as well as receiving further training.

The applicant, a 37-year-old native and citizen of the Philippine Islands, last entered the United States through the Port of San Francisco, California on July 21, 1957. She was admitted as an exchange visitor for a postgraduate course in dentistry. During her training, she participated in the dental treatment of school age children from schools in New York City. Since this treatment of the children was based upon her already acquired knowledge, from prior training in the Philippine Islands, it has been determined that she came to the United States to impart her skill to persons here, as well as to receive further training. A more liberal attitude may therefore be taken in determining if the necessary degree of hardship has been established.¹

On October 15, 1960 she married Edward W. Duchneskie, a native and citizen of the United States. Evidence has been presented to establish that three children were born of this marriage. All were born in the United States.

The applicant's husband is the Assistant Sales Manager for an automobile agency, with some four years of seniority. He does not speak the language of the Philippines, could only enter that country as a visitor, and would be unable to seek gainful employment there.

¹ House Report 721, Subcommittee of the House Committee on the Judiciary, 87 Cong., 1st Sess. (1965), at 122.

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He would therefore have to earn sufficient money to maintain himself in the United States, as well as to attempt to provide a second household in the Philippines for the applicant and the three small children, during the two year period the applicant must reside abroad. In addition, he has a financial obligation to his mother, who suffers from Parkinsons Disease in an advanced state.

If the applicant took her three United States citizen children with her to the Philippines it would seriously handicap, if not eliminate entirely, her opportunities for obtaining employment in that country. If she eventually obtained employment, it would be necessary to secure the services of a reliable person to care for the three small children during her hours of employment. The children, the oldest of whom is less than five years of age, would then be denied the special care and attention of their mother during her hours of employment, thus imposing a hardship upon them.

The Secretary of State, on October 22, 1965, recommended to this Service that the waiver be granted to the applicant. The application will be approved.

ORDER: The admission to the United States of Mrs. Celia Duchneskie, being in the public interest, the foreign residence and physical presence requirements of section 212(e) of the Immigration and Nationality Act are hereby waived.